

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 97-0379 ST
SALES AND USE TAX
For Tax Periods: 1994 Through 1996**

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Issues

1. Sales and Use Tax: Delivery Charges

Authority: IC 6-2.5-2-1, IC 6-2.5-4-1(b), IC 6-2.5-4-1(e)(2), IC 26-1-2-401(2), 45 IAC 2.2-4-3(b)(3), 45 IAC 2.2-4-3(a).

The taxpayer protests the imposition of sales tax on delivery charges.

Statement of Facts

The taxpayer is a wholesale building materials distributor with two Indianapolis locations. The taxpayer also manufactures doors and frames. During the tax period, the taxpayer provided delivery services for certain materials sold to its customers. Delivery was made with trucks either owned or leased by the taxpayer. The taxpayer separately listed the delivery charges on invoices submitted to customers relating to goods purchased by them. The taxpayer did not collect or remit sales taxes on the deliveries. In a routine audit, the Indiana Department of Revenue (department) assessed sales tax on the delivery charges. The taxpayer protested the assessment and a hearing was held. Further facts will be provided as necessary.

1. Sales and Use Tax: Delivery Charges

Discussion

Retail transactions made in Indiana are subject to sales tax. IC 6-2.5-2-1. A retail transaction is defined generally as the acquiring and subsequent selling of tangible personal property. IC 6-2.5-4-1(b). Except for certain enumerated services, sales of services are generally not retail transactions and are not subject to sales tax. Delivery prior to the transfer of title to the purchaser is, however, one of the enumerated services that is specifically subjected to sales tax. IC 6-2.5-4-1(e)(2).

The taxpayer maintains that separately stated delivery charges where no F.O.B. has been established are non taxable. The taxpayer bases this conclusion upon 45 IAC 2.2-4-3(b)(3)

which states, “[d]elivery charge[s] separately stated where no F.O. B. has been established [are] non taxable.” The taxpayer’s reliance on F.O.B. designations is misplaced. F.O.B. designations are applicable only when public transportation companies deliver the product.

There are two prerequisites for separately stated delivery charges to be subject to sales tax. The Regulations state these prerequisites as “[s]eparately stated delivery charges are considered part of selling at retail and subject to sales and use tax if the delivery is made by or on behalf of the seller of property not owned by the buyer.” 45 IAC 2.2-4-3(a). In this instance the delivery of the goods is made by or on behalf of the taxpayer.

The application of sales tax to these delivery charges, then, depends upon when title to the goods transferred to the buyer. The Indiana law concerning the passing of title of goods to the buyer states that, “Unless otherwise explicitly agreed, title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods. . . .” IC 26-1-2-401(2). The taxpayer offered no evidence indicating that title to the goods passed to the buyer at any point prior to delivery of the goods. The taxpayer’s fact situation, then, meets the requirements of 45 IAC 2.2-4-3(a). The delivery charges are subject to Indiana sales tax.

Finding

The taxpayer’s protest is denied.